

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, April 23, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Linda Radler, Chairman  
James Ward  
Robert Bartholomew  
Mary Voelker  
Darryl Judson

**BOARD MEMBERS ABSENT:** Paul Schultz

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
David C. Miller, BA02:125, petitioner and architect for  
Reformation Evangelical Lutheran Church  
Reverend Wayne A. Meier, Pastor of Reformation Evangelical  
Lutheran Church  
Larry Laux, BA02:125, church member  
Joe and Diane Grundman, BA02:125, church members  
Jim and Marlea Weiss, BA02:125, church members  
LaurieWentz, BA02:125, church member  
George and Ginny Brown, BA02:125, church members  
Charles Hegg, BA02:125, church member  
John Manthe, BA02:125, church member  
Brian Stichmann, BA02:125, church member  
Jean Wentz, BA02:125, church member  
Deb Wentz, BA02:125, church member  
Thomas and Maureen Zindars, BA02:117, petitioners  
Harvey and Mary Garfield, BA02:117, neighbors  
Clifford Reimer, BA03:027, petitioner  
Jennifer Zastrow, BA03:028, petitioners  
Allen Bishop, BA03:027, landscape contractor  
Robert Seiser III, BA03:027, contractor  
Julie Quinette, BA03:030, petitioner  
Atty. Dean B. Richards, BA03:031, representing the petitioners  
Richard Kuehn, BA03:032, petitioner  
Mr. and Mrs. Tom Metz, BA03:032, neighbors  
Stephen Stenholt, BA03:032, buyer of the adjacent property  
Atty. Deborah Price, Principal Assistant Corporation Counsel  
Amy Barrows, Senior Land Use Specialist

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Ward *I make a motion to approve the Summary of the Meeting of March 26, 2003.*

The motion was seconded by Ms. Voelker and carried unanimously.

**NEW BUSINESS:**

**BA02:125 DAVID C. MILLER (Reformation Evangelical Lutheran Church)**

Mr. Ward *I make a motion to grant the petitioner's request to expand the building, as set forth by the documentation prepared by the petitioner, for the reasons given by Ms. Radler and Mr. Judson. In addition, since a road setback of 35 ft. would be permitted if the property were sewered, there is no safety issue with the proposed 35 ft. road setback.*

*Mr. Judson's reasons for approval were as follows:*

*There is a hardship. The petitioner explained very clearly that they can't expand to the west because they would be going into the parking lot and if they did expand to the west they would have to relocate the parking from that area and they can't expand to the east because of the detention area. The plan for the building shows good space planning, good architecture and planning, and just because the building would not be 50 ft. from the road doesn't mean that there would be a problem with the traffic. The building would be 35 ft. from the road and according to the Department of Public Works, they will be putting in deceleration lanes that will take care of the traffic problem.*

*Ms. Radler's reasons for approval were as follows:*

*There is a hardship because the building backs up to a dedicated drainage easement, which takes care of that whole section, and the only other reasonable way to expand to the east is to go into that dedicated drainage easement. There isn't any place to relocate the drainage easement and if the drainage easement is eliminated you create a drainage problem for the whole area, so you really can't expand to the east. Expanding to the west, would reverse the interior layout of the church and would require starting over, which is not practical.*

The motion was seconded by Mr. Judson and carried unanimously.  
The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report of December 11, 2002, are as follows:

The petitioners have failed to demonstrate that a denial of this variance will result in an unnecessary hardship. The Wisconsin Supreme Court has defined a hardship as a situation where, in the absence of a variance, no reasonable use can be made of the property at all. The petitioners currently have reasonable use with the existing church, however, if expansion is necessary due to congregation growth, there is a significant undisturbed area that is buildable, which meets the required setbacks. Also the petitioner could also consider constructing on the west side of the existing building and moving the existing parking lot further west. In addition, C.T.H "D" is a heavily traveled road and the addition could be considered a safety hazard since vision could be impaired due to the structure being located so close to the right-of-way of the County Highway. Therefore, granting the requested variance would not be in conformance with the purpose and intent of the Ordinance.

The reasons for the recommendation, as stated in the Staff Report Addendum of April 23, 2003, are as follows:

Based upon our findings and review, the staff continues to strongly support its previous recommendation to the Board, dated December 11, 2002, for denial of the variance request from the road setback. This is a classic example of self-created hardship and there is no justification to compromise the road setback standards to provide a revised layout, which had not been properly planned for at the outset.

Even though Waukesha County Department of Public Works made no comment in regards to the building location of the addition, that does not mean the addition would not be a possible safety hazard for traffic along the highway. Even if there is not a hazard in conjunction with the addition, the petitioner could develop a different design, which meets all setback requirements, even with the addition being located on the northeast side of the existing building. All other reasons as stated in the "Staff Report" of December 11, 2002, still apply.

#### **BA02:117 THOMAS A. ZINDARS**

Mr. Bartholomew

*I make a motion to approve the appeal to the staff's interpretation that pigeons are fowl and/or poultry and must meet the district requirements for the keeping of poultry/fowl. This decision is based on the information contained in the booklet "Homing Pigeons Perception vs. Reality" and in the letters on file from Ron Kean, Extension Poultry Specialist with the College of Agriculture and Life Sciences of the University of Wisconsin-Madison and from Thomas M. Herlugson, DVM.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's interpretation was as follows:

The pigeons on the subject property are considered fowl and/or poultry and are regulated in Section 9.01(1)(A) of the Waukesha County Zoning Code. If the petitioner cannot meet the provisions in Section 9.01(1)(A) of the Waukesha County Zoning Code, as he does not have the agreement or permission of all of the neighbors within 300 ft. of the subject property agreeing to the keeping of the pigeons, and because the property owner does not have three (3) acres of land area, the keeping of these pigeons is in violation of the provisions of the Zoning Code and, accordingly, the birds shall not be allowed and must be removed from the property.

**BA03:027 CLIFFORD REIMER**

Ms. Voelker

*I make a motion to adopt the staff's recommendation for the approval of this request, with the conditions stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft.
2. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed detached garage, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

This request is for a special exception, rather than a variance, which does not require the demonstration of an unnecessary hardship. The approval of this request will result in the replacement of a non-conforming garage with a new garage in a conforming location. The new, slightly larger, garage is in keeping with other development in the area and will provide needed storage on the property. The new garage will not adversely affect the neighboring properties and is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA03: 028 TERENCE & JENNIFER ZASTROW**

Mr. Bartholomew

*I make a motion to hold this hearing in abeyance until our next meeting on May 14, 2003, with the consent of the petitioner, so that the Land Resources Division can conduct another site inspection, now that the site is no longer covered with snow, and advise us as to which, if any, of the proposed retaining walls are needed for erosion control or to correct drainage problems on the property.*

The motion was seconded by Mr. Judson and carried unanimously.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. A reasonable use of the property would still exist without the proposed retaining walls.

If the petitioners desire to grade the lake side of their property to alleviate a drainage problem, that could be done without the installation of retaining walls. Similarly, retaining walls are not necessary to provide a fire exit for a basement-level bedroom, as the building code permits basement-level bedrooms with egress windows, as long as the window is at least 20 inches x 24 inches and provided the window is no more than 46 inches above the floor. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

**BA03:030 BERNARD & JULIE QUINETTE**

Mr. Bartholomew

*I make a motion to adopt the staff's recommendation for denial, for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Voelker and carried with four yes votes. Mr. Ward voted no.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested floodplain setback variances to permit the construction of decks and a patio would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. Although the door on the lake side of the residence, at the level of the elevated first floor, cannot be used without the addition of a deck or balcony, any hardship that may exist is self-created and self-created hardships cannot be used to justify the granting of a variance. The proposed decks and patio are not necessary for a reasonable use of the property. Replacing the door on the lake side of the residence with a window would still provide a reasonable use of the property.

In addition, to qualify for a variance, it must also be demonstrated that the property has unique physical characteristics (different from other properties in the area) that would deny a reasonable use without the requested variance and that granting the requested variance is not contrary to the public interest. The property is similar to other lots in the area and has no unique physical characteristics to justify granting the requested floodplain setback variance. While the proposed decks and patio may seem to be minor and not contrary to the public interest, the cumulative affect of additional impervious surfaces, such as the proposed decks and patio, increase runoff and decrease the available area for water to be absorbed into the ground, with negative effects on the water quality of the nearby lake. Finally, as it exists now, the residence will become a conforming structure, with a "sewer reduction", after the property is served by municipal sewer, but if the requested floodplain setback variance is granted, it would remain a non-conforming structure. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

**BA03:031 GARRY & CONNIE MUENCH**

Ms. Radler

*I move that we adopt the staff's recommendation, as stated in the*

*Staff Report, with the following additional conditions:*

*The petitioners shall hire a civil engineer or landscape architect, to be approved by the Planning and Zoning Division staff, who will be responsible for overseeing and inspecting the project to ensure that the work is completed in accordance with the approved plans.*

*This matter shall be referred back to the Corporation Counsel's office for reconsideration of the fine because it is felt that a \$3,500.00 penalty is not sufficient for this type of blatant violation.*

The motion was seconded by Ms. Voelker and carried with four yes votes. Mr. Ward abstained.

The staff's recommendation was for approval, with the condition that all conditions placed by the Waukesha County Park and Planning Commission on their April 17, 2003, approval of the Conditional Use request (SCU- 1302), must be complied with. The conditions placed by the Waukesha County Park and Planning Commission on their April 17, 2003, approval of the Conditional Use request (SCU- 1302) are listed below.

1. All conditions of the Town of Merton Planning Commission's approval of September 4, 2002, must be complied with.
2. An Erosion Control Permit must be obtained from the Land Resources Division of the Waukesha County Department of Parks and Land Use and a copy of that permit must be submitted to the Planning and Zoning Division Staff, prior to the issuance of a Conditional Use Permit.
3. A permit must be obtained from the Department of Natural Resources (DNR) authorizing grading in excess of 10,000 sq. ft. and a copy of that permit must be submitted to the Planning and Zoning Division Staff, prior to the issuance of a Conditional Use Permit.
4. The north retaining wall must be relocated at least 5 ft. from the north lot line and shall not extend lakeward of the west wall of the residence.
5. The central portion of the southwest retaining wall shall be removed and the area graded to a gradual slope. The northern portion of the southwest retaining wall shall not extend south of the southern edge of the patio. A curved section of the southern portion of the southwest retaining wall may remain, as proposed, to protect the two mature trees in that area.
6. The proposed retaining wall along the south side of the driveway in the area east of the corner of the attached garage shall be permitted.
7. All retaining walls shall be of the minimum height necessary, with the curved retaining wall around the two trees to be no more than one course high.
8. There shall be no further excavation into the top of the ridge that runs parallel to the west side of the residence.
9. The retaining walls must be relocated and reconfigured as noted above, and the entire disturbed

area, including the area on the southeast side of the attached garage that is now covered with gravel, must be seeded and protected with excelsior or equivalent material or sodded, no later than May 15, 2003.

10. The staff has determined that the retaining walls, as now proposed and with the modifications recommended above, are necessary for erosion and sediment control and, therefore, do not require variances from the shore setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance. However, if any retaining walls are to remain within 75 ft. of Moose Lake, it will be necessary for the Waukesha County Board of Adjustment to amend a condition that they placed on the shore setback variance granted for the residence on June 27, 2001 (BA01:040), which prohibited retaining walls within 75 ft. of the lake, prior to the issuance of a Conditional Use Permit. In addition, if any retaining walls are to remain within 75 ft. of Moose Lake, it will also be necessary for the Town of Merton Board of Adjustment to determine whether the retaining walls require shore setback variances under the Town of Merton Zoning Ordinance and, if so, to grant any necessary variances to permit the retaining walls under the Town of Merton Zoning Ordinance, prior to the issuance of a Conditional Use Permit. If the Waukesha County Board of Adjustment does not amend their condition prohibiting any retaining walls within 75 ft. of the lake or if the Town of Merton Board of Adjustment determines that the retaining walls require shore setback variances under the Town of Merton Zoning Ordinance and does not grant those variances, no retaining walls will be permitted within 75ft. of the lake.
11. In order to ensure that the finished grading is done in conformance with this approval, an "As-built" Grading Plan, showing the finished grades and the location of all retaining walls, must be submitted to the Planning and Zoning Division Staff after completion of the work, but no later than August 1, 2003.
12. This Conditional Use approval does not authorize the placement of any pea gravel along the south shoreline, as shown on the revised Grading Plan. That was the subject of a Minor Grading Permit, which has been denied, and it is not part of this Conditional Use.
13. This matter shall be referred to the Waukesha County Corporation Counsel's office for appropriate legal remedy.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will not adversely affect the adjacent property owners or the lake and will allow the petitioners to stabilize the existing slope, retain their existing patio, and protect two mature trees. As conditioned, the retaining walls, with the exception of the retaining wall around the two mature trees, will be no closer to the lake than the recently constructed residence, and there will be no retaining walls within 5 ft. of the side lot line. Therefore, the approval of this request, as conditioned, is in conformance with the purpose and intent of the Ordinance.

#### **BA03:032 RICHARD KUEHN**

Mr. Judson

*I make a motion to approve the request, per the staff's recommendation, with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The new garage must be no more than 24 ft. x 40 ft., as measured to the outer edges of the walls, with overhangs not to exceed two (2) ft. in width.
2. The new garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft.
3. Prior to the issuance of a zoning permit, a complete set of plans for the proposed garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
4. The new garage must be located at least 5 ft. from the side lot line and at least 25ft. from the base setback line of the road (at least 41.5 ft. from the edge of the 33 ft wide paved road right-of-way), as measured to the outer edges of the walls, with overhangs not to exceed 2 ft. in width.
5. If the new garage is less than 10 ft. from the detached garage on the adjacent lot to the north, it must contain a firewall sufficient to meet the one-hour fire rating contained in the building code.
6. The floor of the garage must have an elevation of at least 900.9 ft. above mean sea level (1 ft. above the 100-year flood elevation). The area around the garage must be filled to an elevation of at least 900.9 ft. above mean sea level, with the fill extending at that elevation for at least 15 ft. beyond the garage, wherever possible. Where that is not possible, due to lot line constraints, the fill shall extend as far as possible without resulting in slope conditions that would adversely affect surface water drainage onto the adjacent properties or the road.
7. Prior to the issuance of a zoning permit, a stake-out survey showing the location and elevation of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. In order to ensure construction of the new garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 7.
9. Following the installation of the garage slab, certification shall be obtained from a registered land surveyor that the elevation of the slab is at or above 900.9 ft. above mean sea level. A copy of



that certification must be submitted to the Town of Merton Building Inspector and the Planning and Zoning Division staff, prior to proceeding with construction of the garage.

10. A "preliminary site evaluation" of the proposed garage and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a zoning permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed garage, and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a sanitary permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property by permitting the replacement of a detached garage, which is in poor condition and within the 100-year floodplain, with a new, slightly larger garage that will be elevated above the 100-year floodplain. The slightly larger garage is necessary because the residence does not have a basement and there are no other accessory buildings on the property. Requiring the new garage to be at least 5 ft. from the side lot line will facilitate the placement of fill around the garage, which is necessary to meet the floodproofing standards of the Ordinance and to provide access to the new garage. The approval of this request, with the recommended conditions, will not adversely affect the surrounding property owners or the lake and is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

##### **BA03:022 LEROY ZIMDARS**

Ms. Voelker

*I make a motion to amend our decision of April 9, 2003, to permit this matter to be reconsidered before July, 9, 2003, if all the requested information can be provided before that date.*

The motion was seconded by Mr. Ward and carried unanimously.

#### **CLOSED SESSION**

Mr. Judson

*I move we convene in closed session pursuant to Section 19.85 (1), (g), Wisconsin Statutes, to confer with Attorney Deborah Price of the Corporation Counsel's office to discuss pending litigation, State of Wisconsin vs. Waukesha County Board of Adjustment, Circuit Court Case #03-CV-648, regarding BA02:138, Alvin Brook, Town of Mukwonago.*

The motion was seconded by Mr. Bartholomew. A roll call vote was taken and the motion carried unanimously.

**OPEN SESSION**

Ms. Voelker *I make a motion to re-convene in open session.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

**ADJOURNMENT:**

Ms. Voelker *I make a motion to adjourn this meeting at 11:15 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment